

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN THE MATTER OF:)	
)	
TORUS MACHINING, INC.)	CASE NO. 06-10083
)	
Debtor)	

DECISION ON ORDER TO SHOW CAUSE

At Fort Wayne, Indiana, on May 15, 2006.

On April 24, 2006, the court held a pretrial conference with regard to issues raised by a motion for relief from stay and abandonment filed on behalf of CitiCapital Commercial Corporation. The debtor appeared for this conference, through its counsel, Daniel Skekloff, as did counsel for the trustee, R. David Boyer. Movant's counsel, Douglas Howard, was nowhere to be seen. As a result, the court denied the motion for relief from stay and, on its own motion, issued an order requiring Mr. Howard to show cause in writing why he should not be required to pay the reasonable attorney fees incurred by the debtor and the trustee as the result of the scheduled pretrial conference. The order was issued pursuant to Rule 16(f) of the Federal Rules of Civil Procedure which authorizes the court to impose sanctions, including the payment of attorney fees, upon an attorney who fails to appear for a pretrial conference or who is substantially unprepared to participate in such a conference. See, Fed. R. Bankr. P. Rule 7016; N.D. Ind. L.B.R. B-7016(1)(b). See also, In re Philbert, __ B.R. __, 2006 WL 995394 (Bankr. N.D. Ind. 2006). Mr. Howard filed a timely response to the court's order to show cause and it is that response which brings the matter before the court for a decision.

Counsel states that the morning of the pretrial conference, "he was on a conference call with another client and failed to recognize the time" As a result, he failed to call the court at the designated time.

The failure to attend a pretrial conference is one of the types of misconduct specifically identified by Rule 16(f) as providing the basis for sanctions. At least to the extent that the opposing party should be compensated for the additional costs and expenses incurred because of counsel's non-compliance, the rule is almost, but not quite, mandatory. Unless non-compliance was "substantially justified" or other circumstances would make an award "unjust," the non-defaulting party is entitled to reimbursement. As a result, the imposition of sanctions under the rule does not depend upon a finding of bad faith, willfulness, or contumaciousness. Matter of Sanction of Baker, 744 F.2d 1438, 1440-41 (10th Cir. 1984). A negligent failure to comply will suffice. Id. at 1441. See also, Harrell v. U.S., 117 F.R.D. 86, 88 (D. E.D. N.C. 1987); Barsoumian v. Szozda, 108 F.R.D. 426 (D. S.D. N.Y. 1985).

Counsel's response to the court's order to show cause fails to indicate that his failure to appear for the scheduled pretrial conference was substantially justified or to demonstrate that other circumstances would make an award unjust. The court acknowledges that Mr. Howard's absence was not willful or contumacious. It was, instead, simply negligent because counsel got involved in other things, lost track of the time, and forgot to call the court. That may make counsel's absence somewhat understandable, but it does not make it substantially justified. Neither does it change the reality that the trustee and debtor's counsel were required to (and did) go to the trouble of properly preparing for and attending the scheduled pre-trial conference. Because of Mr. Howard's absence, their efforts were largely wasted and the court sees nothing unjust about requiring an attorney who has caused its opposition to unnecessarily devote time and trouble to a matter to reimburse them for the reasonable value of their labors. In the court's opinion such a result is necessary, not only as a matter of economic and procedural fairness, but also in order to impress upon litigants the

importance of appearing for and being prepared for proceedings scheduled with regard to the things they file. In re Philbert, __ B.R. __, 2006 WL 995394 (Bankr. N.D. Ind. 2006). Doing so is especially appropriate in this case because Mr. Howard has recently refiled the motion for relief from stay with the result that the court, debtor's counsel, and the trustee face the prospect of still further proceedings directed to an issue that might well have been disposed of at the originally scheduled pre-trial.

Douglas Howard shall, therefore, pay the reasonable attorney fees and expenses incurred by both the trustee and the debtor as a result of their preparing for and attending the pre-trial conference held in this matter on April 24, 2006. In order to compensate the United States for the costs he has unnecessarily imposed upon it and the additional time and attention he has required the court to devote to this matter, thereby depriving other litigants of its attention, and to deter similar conduct, he shall also pay the clerk of this court the sum of \$150.00.

An appropriate order will be entered.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court